

<p style="text-align: center;">KENTUCKY CORRECTIONS Policies and Procedures</p>	<p>Policy Number</p> <p style="text-align: center;">3.22</p> <p>Date Filed</p> <p style="text-align: center;">June 3, 2005</p>	<p>Total Pages</p> <p style="text-align: center;">5</p> <p>Effective Date</p> <p style="text-align: center;">September 20, 2005</p>
<p>Authority/References</p> <p>KRS 196.035, 197.020, 510.120(c); 101 KAR 2:102; 29 C.F.R. § 1604.11 ACA 4-4281-6, 4-4056; P & P ACA 3-3053</p>	<p>Subject</p> <p style="text-align: center;">STAFF SEXUAL MISCONDUCT</p>	

I. APPLICABILITY

To all full time employees, part-time employees, interim employees, interns, students, volunteers, consultants, and contractors doing business with Corrections.

II. DEFINITIONS

"Consensual" means as existing or made by mutual consent without an act of writing. No offender, either incarcerated or under the supervision of Corrections, can give consent to any sexual relationship with an employee. Any acts as defined in this policy that are conducted outside of the employee's normal duties are considered a violation of this policy.

"Offender" means any person: (1) confined in a correctional institution; or (2) under the probation or parole supervision of Corrections, including any person on inactive supervision who has not received a final discharge.

"Sexual abuse" means subjecting another person to any sexual act or contact between an employee, volunteer, or agency representative and an offender by force, persuasion, inducement, or enticement; any sexual act or contact in which an employee, volunteer, or agency representative participates or forces any offender to engage; subjecting another person who is incapable of giving consent by reason of their custodial status, physical state or mental state; or rape, sexual molestation, prostitution or other form of sexual exploitation.

"Sexual assault" means any sexual touching or contact which is non-consensual, forced or coerced in any manner, including but not limited to rape, sodomy, or unlawful touching as defined by the Kentucky Revised Statutes.

"Sexual contact" means all forms of sexual contact, intentional sexual touching or physical contact of a sexual manner, either directly or through clothing, of the genitalia, anus, groin, breasts, inner thighs, buttocks, with or without the consent of the person; or any unwanted touching with the intent to arouse, humiliate, harass, degrade, or gratify the sexual desire of any person.

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"Sexual harassment" means all of the following, whether by staff or offenders: unwelcomed sexual advances; sexually offensive language, comments or gestures; influencing, promising or threatening an offender's safety, custody, privacy, housing, privileges, work or program status, in exchange for personal gain or favor of a sexual nature; creating or encouraging an atmosphere of intimidation, hostility or offensiveness as perceived by any individual who observes the sexually offensive behavior or language.

"Sexual misconduct" means any behavior or act of a sexual nature directed toward an offender by an employee, volunteer, visitor or agency representative. This includes acts or attempts to commit acts including but not limited to sexual assault, sexual abuse, sexual harassment, sexual contact, conduct of a sexual nature or implication, obscenity and unreasonable invasion of privacy. Sexual misconduct also includes but is not limited to conversations or correspondence, which suggest a romantic or sexual relationship between an offender, and any party mentioned herein.

"Unauthorized behavior" means any activity or contact with an offender or offender's family, that is unrelated or unnecessary to the employee's assigned duties or official Department business.

III. POLICY

It is the policy of Corrections that sexual misconduct shall not be tolerated. Corrections shall prohibit conduct that rises to the level set by 29 C.F.R. § 1604.11. Corrections' employees shall be advised to avoid offensive or inappropriate conduct or sexual misconduct at work. Complaints of sexual misconduct shall be investigated in a prompt, effective and uniform manner. Appropriate action shall be taken to ensure that any sexual misconduct shall not recur.

IV. PROCEDURES

A. PROHIBITED BEHAVIOR

1. Any acts defined as sexual abuse in this policy.
2. Any acts defined as sexual assault in this policy.
3. Any acts defined as sexual contact in this policy.
4. Any acts defined as sexual harassment in this policy and as defined in 29 C.F.R. § 1604.11.
5. Any acts defined as sexual misconduct in this policy.
6. Any acts defined as unauthorized behavior in this policy.
7. Sexual advances in any form towards an offender.

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8. Sexually offensive language, comments or gestures.
9. Influencing, promising or threatening an offender's safety, custody, privacy, housing, privileges, work or program status, in exchange for personal gain or favor of a sexual nature.
10. Creating or encouraging an atmosphere of intimidation, hostility, or offensiveness as perceived by any individual who observes the sexually offensive behavior or language.
11. The act or attempted act of observing or interfering with an offender's personal affairs without a reasonable need to do so for the immediate safety and security of the offender, employees, or others within the institution or office environment, i.e., failing to properly announce his presence when entering a housing unit, reading personal mail or written materials of an offender when not required for the safety and security of the environment.
12. Any activity or contact with an offender or offender's family that is unrelated or unnecessary to the employee's assigned duties or official Department business.

B. EMPLOYEE'S RESPONSIBILITY

If an employee is subjected to an offer by an offender that would constitute sexual misconduct if by an employee or becomes knowledgeable of sexual misconduct occurring, they shall take the following steps:

1. Report all contacts, observations, and knowledge of sexual misconduct by an offender through the required reporting procedures.
2. Adhering to these procedures by ensuring that their conduct does not constitute or promote sexual misconduct nor in any other way violate the provisions of these procedures.

C. SUPERVISOR'S RESPONSIBILITY

1. The supervisor or other individual receiving a complaint of sexual misconduct shall ask the complainant to put the specifics of his complaint in writing. If the complainant refuses, the supervisor or other individual shall: (a) document the refusal and the specifics of the complaint as told to him by the complainant; and, (b) ask the complainant to confirm that his written version is accurate.

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2. The supervisor or other individual receiving a complaint of sexual misconduct shall ask the employee involved and any witnesses to the incident to put the specifics of the incident in writing.
3. A supervisor or other individual receiving a complaint of sexual misconduct shall report it directly to the Warden, District Supervisor or Division Director, who shall contact the Division of Personnel Services or the Office of Legal Services before taking further action.

D. OFFENDER RESPONSIBILITY

An offender has a responsibility to report any conduct by an employee that constitutes sexual misconduct through the required reporting procedures.

E. INVESTIGATION

Depending upon the nature of the complaint, the Division of Personnel Services, the Office of Legal Services and the appropriate Deputy Commissioner shall determine whether the investigation shall be conducted at the district or institutional level or by an outside investigator. During the course of the investigation, the accused may be temporarily re-assigned. The accused may be placed on special investigative leave pursuant to 101 KAR 2:102.

F. FINAL ACTION

1. Appropriate action, which may include disciplinary action, up to and including dismissal may be taken, based upon the findings of the investigation. If the findings are inconclusive but the investigation reveals potentially problematic conduct, preventative action shall be taken. The accused shall be reminded of Corrections' policy and further preventive measures may be taken including additional training to avoid a further recurrence or permanent reassignment.
2. The victim of sexual misconduct shall be referred to the appropriate resources, if necessary, to receive help in dealing with the effects of the sexual misconduct.

G. CONFIDENTIALITY

The privacy of the complainant and the accused shall be protected to the fullest extent permitted by the circumstances. An individual interviewed in the course of resolving the complaint shall be cautioned to treat the information as confidential. Breach of this confidentiality shall be grounds for disciplinary action.

H. RETALIATION

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Retaliation by or against any party involved in a complaint shall be strictly prohibited. Retaliation, in, and of itself, shall be grounds for disciplinary action.

I. FALSE ACCUATIONS

If a complaint is filed falsely and maliciously, or if it is learned that false information is provided to anyone in the course of an investigation, disciplinary action, up to and including dismissal may be taken.